

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN K. McCUAN,

Defendant.

Case No. 04-cr-40049-DRH

ORDER

HERNDON, Chief Judge:

On January 25, 2008, the Court conducted a hearing regarding the conclusion of Dr. Pietz, the staff psychologist ordered by the Court, pursuant to **18 U.S.C. § 4241(b) & (d)(2)(A)** to continue to treat and evaluate Defendant. Dr. Pietz concluded that Defendant was not competent to stand trial, nor is it likely he will be restored to competency in the foreseeable future (Doc. 86). Further, Dr. Pietz recommended that a risk assessment be conducted on Defendant, pursuant to **18 U.S.C. § 4246(a)**. At the hearing, both parties agreed with Dr. Pietz's findings and recommendation.

On February 21, 2007, subsequent to a competency hearing, the Court committed Defendant to the custody of the Attorney General for hospitalization and treatment to determine whether Defendant could attain the mental competency to

stand trial, pursuant to **18 U.S.C. § 4241(b)** (Doc. 61). Under the statute, Defendant's hospitalization was not to exceed a period of four months. On September 6, 2007, in response to a letter from the Warden at the U.S. Medical Center for Federal Prisoners in Springfield, Missouri ("FMC Spingfield"), requesting an extension of time to complete Defendant's mental health treatment, the Court ordered, pursuant to **18 U.S.C. § 4241(d)(2)(A)**, for Defendant to continue receiving mental health treatment until November 20, 2007 (Doc. 81). Dr. Pietz's report was the result of Defendant's extended hospitalization.

18 U.S.C. § 4241(d) requires that, if at the end of the additional period of time for the defendant to receive hospitalization and treatment to access competency to stand trial, it is determined that there will be no improvement in competency to allow the criminal proceedings to go forward, the defendant will be subject to the provisions of sections 4246 and 4248. In this case, section 4248 does not apply, so the Court must proceed in accordance with **18 U.S.C. § 4246**, which requires the Court to conduct a hearing (called a "risk assessment hearing") to determine whether the defendant, if previously committed to the custody of the Attorney General under section 4241(d), "is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage of property to another." **18 U.S.C. § 4246(a)**. The statute further permits the Court to order a that a psychiatric or psychological examination be conducted (called a "risk assessment evaluation")

and a report issued prior to the hearing.

Therefore, because it is the opinion of the treating psychologist that defendant John McCuan is not likely to be restored to competency in the foreseeable future and because the parties are in agreement, the Court hereby **ORDERS** that defendant McCuan be remanded to the custody of the Attorney General for a risk assessment evaluation and report, pursuant to **18 U.S.C. § 4246**. The risk assessment evaluation shall be conducted in accordance with **18 U.S.C. § 4247(b)**. The examination shall be completed within 45 days unless an extension of this time is granted by the Court. The 45 days allowed for the examination under this Order shall begin on the day the Defendant is first physically present at an institution designated by the Attorney General. Unless impracticable, the risk assessment evaluation shall be conducted in the suitable facility closest to the Court. **18 U.S.C. § 4247(b)**. The risk assessment report, to be prepared in accordance with **18 U.S.C. § 4247(c)**, should be forwarded to this Court so that it may be filed by the Clerk, under seal. Upon receipt of the risk assessment report, the Court shall set a specific hearing date.

IT IS SO ORDERED.

Signed this 28th day of January, 2008.

/s/ David R. Herndon

Chief Judge
United States District Court